IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5839 OF 2004

1. Shobhana Bhartia
and Ors. ...Applicants.

V/s

1. Ajay Ganesh Ubale
and anr. ...Respondents.

Mr. Amit Desai i/b M/s. M.S. Bodhanwala & Co. for the applicants.

Mr. Anand Grover with Mrs. Monica Sakhrani for the respondents.

CORAM: V.M.KANADE,J.

DATE: 28th April 2005

P.C.:

1. I have heard the learned Counsel for the applicants and the learned Counsel for respondent No.1 at length and the matter is being disposed of finally at the admission stage.

2. Applicants are challenging the order of issuance of process dated 15/9/2004 passed by the Metropolitan Magistrate, 24th Court, Esplanade, Mumbai and also the complaint which is filed under section 499 of the Indian Penal Code.

3. Brief facts which are relevant for the purpose of deciding this Criminal Application are as under:-

4. Applicants are associated with Hindustan Times Limited which is a Company registered and incorporated in New Delhi and which is engaged in the business of printing and distribution of Hindustan Times News Paper which is published from New Delhi. All the applicants are arraigned as accused in the Criminal Case filed by respondent No.1 for the offence punishable under sections 500, 501, 502 read with section 34 of the Indian Penal Code.

5. Respondent No.1 was working in the Office of Zonal Director of Narcotics Control Bureau, referred to as NCB. He was sent their on deputation from the Customs Department which was his parent Department. Applicants published an Article in their News Paper on 4/12/2001 which was captioned as "Mumbai NCB Chief under CBI Scanner". The said Article was written by accused No.4, applicant No.4 herein. The complainant filed complaint in the Court of the Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai against the applicants under section 500, 501, 502 read with section 34, 114 of the Indian Penal Code in which it was alleged that the applicants were guilty of publishing statements which were per se defamatory and, therefore, they were liable to be prosecuted

under the aforesaid provisions. The Trial Court issued process on the said complaint and, thereafter, applicants have preferred this application for quashing the process and the said complaint.

6. The learned Counsel appearing on behalf of applicants has taken me through the complaint which is filed by the complainant. He has invited my attention to para 4 of the complaint. It is submitted by the learned Counsel that in the said paragraph 4, respondent No. 1 - complainant himself has made averments from which it can be clearly inferred that there was some tussle between CBI and respondent No.1. He submitted that from the averments it will be clearly seen that the CBI had written a letter to the Director General, NCB recommending action to be taken against the complainant by falsely alleging that he had plans to plant drugs to implicate CBI officers in false cases. The learned Counsel submitted that though according to the complainant the said allegation was false, there was a clear admission that the CBI had, in fact, written such letter to the Director General, NCB. The learned Counsel, thereafter, invited my attention to the Article in question. He submitted that the Article had stated the facts which are not incorrect and which could be

seen from the averments made in the complaint itself. He further invited my attention to the affidavit filed by one of the officers of the CBI in proceeding which was initiated by respondent No.1 in the Central Administrative Tribunal. He invited my attention to the averments made in the said affidavit by the Officer of CBI which clearly indicated that certain officers of the CBI were at logger head with respondent No.1 and there were serious disputes and quarrels which were going on between the two Departments. He further invited my attention to para 6 of the complaint in which respondent No.1 had admitted that on 19th/20th July, 2001, CBI raided the premises of the NCB and the report had appeared in the News Paper on 22/7/2001 under the caption " Narcotics bureau men caught in CBI net". It is submitted that the complainant had categorically stated that the said Article did not make any false allegations or imputations against the complainant. Thus, from averments in the complaint itself no offence was disclosed and even otherwise the applicants were protected by Exception 1 and Exception 9 of section 499. He further submitted that it was the duty of the media to make the people aware about the various events and particularly to publish those facts which people had a right to know. It is submitted that the

Article, therefore, was published in public interest in order to make them aware about the facts which were admitted by the complainant himself in complaint and, therefore, the Article did not contain material which was figment of imagination of the author of the Article. He submitted that if defamation proceedings are initiated on the basis of such Article, it would be impossible for the media to publish any article regarding the facts and events which take place in the country. He invited my attention to the provisions of section 499 and Exception 1 and Exception 9. He submitted that this is a fit case for quashing the process and the complaint. The learned Counsel relied upon seven judgments, compilation of which has been filed by him. Those judgements are (1) Rajendra Kumar Sitaram Pande Vs Union, reported in AIR 1999 SC 1028, (2) Jawaharlal Darda Vs. Manoharrao Ganpatrao Kapsikar, reported in AIR 1998 S.C. 2117, (3) A.H.K. Prasad Vs. Union reported in 2002 CRI.L.J.2464, (4) A.K. Jain & Ors. Vs. State of Sikkim, reported in 1992 CRI.L.J. 843, (5) A.K. Jain Vs. State of Sikkim, reported in 1992 CRI. L.J. 839, (6) Nihal Singh & Ors. Vs. Arjan Das, reported in 1983 CRI. L.J. 777 and (7) D.N. Rao Vs. R.D. Bhagvandas, reported in 1986 CRI.L.J. 888. The learned Counsel has taken me through these judgments in support of the

submissions made by him.

7. The learned Counsel appearing on behalf of respondent No.1 has submitted that the Article in question was clearly defamatory as the facts stated in the said Article were patently false. He submitted that the Article which stated that respondent No.1 who was Mumbai Chief of the Narcotic Drugs Control Bureau was being investigated by CBI and Finance Ministry for alleged extortion and for trying to frame an individual for drug trafficking. This statement was wrong to the knowledge of the applicants. The second statement in the said Article is that "NCB investigators from Mumbai, in a report to the Finance Ministry, confirmed that Ubale tried to extort and book an innocent person". It is submitted that this imputation was per se defamatory and was false to the knowledge of the applicants. It is submitted that, similarly, the statements in the Article that "Dubey filed a complaint with the CBI alleging that the Zonal Deputy Director had demanded Rs 5 lakh. The agency searched Ubale’s office and seized some documents." were also per se defamatory and false to the knowledge of the applicants. It is submitted that the aforesaid statements and the said Article in its entirety has no factual basis whatsoever and were totally false. It

is submitted that the FIR filed by the CBI and the written complaint by Shri Dubey do not make any allegations of extortion or alleged framing against the complainant. It is submitted that the allegations made in the Article were not based on any letters/orders and affidavits of the concerned Officers of NCB and CBI. It is further submitted that no report of the NCB was sent to the Ministry of Finance as alleged by accused No.4 in the said Article. He further submitted that the Officers of the NCB and CBI Officers had filed various affidavits in various courts, none of which mentioned any investigation by CBI against the complainant. The learned Counsel further submitted that though the complainant had requested them to correct the statements of facts, they did not pay any heed to the request made by the complainant. The learned Counsel, therefore, submitted that the Article was per se defamatory and the applicants were liable to be prosecuted. He submitted that even if it is alleged that the statements in the Article are true and correct, the only option available with the applicants was to prove that those statements are correct by leading evidence in the trial court. He submitted that, therefore, this Court should not interfere with the order of issuance of process by the Magistrate as

prima facie case has been made out by the complainant and this Court should not appreciate the facts and come to the conclusion that the offence is not made out in the complaint. He submitted that freedom of the press was subject to the reasonable restrictions imposed by Article 19 of the Constitution of India and that the defamation was one such reasonable restriction. He relied upon the following judgments. (1) State of Bihar Vs. Rajendra Agrawalla reported in (1996) 8 SCC 164, (2) M.N. Damani Vs. S.K. Sinha and others, reported in AIR 2001 SC 2037, (3) Harbhajan Singh Vs. State of Punjab and another, reported in AIR 1966 SC 97, (4) Chaman Lal Vs. The State of Punjab, reported in AIR 1970 SC 1372, (5) John Thomas Vs. Dr. K. Jagadeesan, reported in (2001) 6 SCC 30 and (6) Shatrughana Prasad Sinha vs. Rajbhau Surajmal Rathi and others, reported in (1996) 6 SCC 263.

8. I am unable to accept the submissions made by the learned Counsel appearing on behalf of the applicants. The Supreme Court time and again has observed that the inherent powers of the High Court under section 482 of the Criminal Procedure Code should be very sparingly and cautiously used and only when the Court comes to

the conclusion that there was manifest injustice or there would be an abuse of process of court then, only in such cases, process should be quashed and set aside. Further, in cases where private complaints are filed and cognizance has been taken by the Magistrate and if it is found that even the material collected and the investigation conducted is taken at its face value, then also no offence is made out then, in that case, power under section 482 can be exercised. Thus, it is not expected that the High Court should appreciate the evidence and come to the conclusion that no offence is made out. A reference can be made to the judgment of the Supreme Court on this point in the case of State of Bihar Vs. Rajendra Agrawalla reported in **(1996) SCC 164.** Similarly, in the case of M.N. Damani Vs. S.K. Sinha and others reported in **AIR 2001 SC 2037,** the Supreme Court has taken a similar view.

9. Further, the Supreme Court has, in number of judgments, held that if defence is raised under any of the exceptions to section 499 then the burden is cast on the accused to prove that his case falls under the exception. The said view is taken by the Supreme Court in the case of Harbhajan Singh Vs. State of Punjab and another reported in **AIR 1966 SC 97** and also

in the case of Chaman Lal Vs. The State of Punjab reported in **1970 SC 1372.** The Supreme in the case of John Thomas Vs. Dr K. Jagadeesan reported in **(2001) 6 SCC 30** has held that if the imputation is per se defamatory, it would relieve the complainant of the burden to establish that publication of such imputation has lowered him in the estimation of the right-thinking member of the public. The Supreme Court has further observed that even if the imputation is not per se defamatory that by itself would not benefit the publisher as the complainant had a right to establish on evidence that the publication has, in fact, amounted to defamation. Similarly, in the case of Shatrughna Prasad Sinha Vs. Rajbhau Surajmal Rathi and others reported in **(1996) 6 SCC 263**, the Supreme Court has observed that if certain allegations have been made then whether such allegations would constitute defamation or not is a matter to be considered by the Magistrate at a later stage and at this stage the Supreme Court would not appreciate the evidence or scope of and meaning of the statement. If the submissions made by the applicants are to be accepted then this Court would be required to appreciate the evidence or scope of and meaning of the statement which cannot be done at this stage as this Court cannot embark upon weighing the evidence and

come to the conclusion to hold, whether or not the allegations made in the complaint constitute an offence punishable under section 500. In the present case the Article which is published by the News Papers, three statements of facts have been assailed viz. (1) "The Respondent No.1 was being investigated by CBI and the Finance Ministry for alleged extortion and for trying to frame an individual for drug trafficking" (2) "NCB investigators from Mumbai, in a report to the Finance Ministry, confirmed that respondent No.1 tried to extort and book an innocent person" and (3) "Dubey filed a complaint with CBI alleging that the demand of Rs 5 lakh was made by respondent No.1 and, in that connection his office has been searched by the agency". It is alleged in the complaint that all these statements are false to the knowledge of the accused. The emphasis laid by the learned counsel appearing on behalf of the applicants on the averments in para 4 of the complaint and his further submission based on these averments that there was a definite tussle between the two Departments which is clear from the affidavit filed by the Officer of the CBI in the Central Administrative Tribunal and, therefore, the Article stating that the NCB Chief was under CBI scanner cannot be said to be untrue, cannot be accepted. This submission cannot be accepted, as

this Court would have to scrutinize the affidavits of Officers of the CBI which were filed in the Central Administrative Tribunal. Even if these affidavits are examined at length, none of the allegations which are made in the said Article are borne out from these affidavits.

10. The ratio of the judgements on which reliance is placed by the learned counsel for the applicants also do not assist the applicants' case as the ratio in the said judgements is not applicable to the facts of the present case. In the case of Rajendra Kumar Sitaram Pande vs. Union reported in **AIR 1999 S.C. 1028** a complaint was quashed on the ground that the allegations were made against the complainant by reporting to his Superior Officer and, thereafter, the complainant was found guilty in the departmental inquiry pursuant to the complaint filed by the accused and the Supreme Court, in these facts, held that the allegations in the complaint of the accused were covered by exception 8 to section 499 of the IPC. The facts in the present case are entirely different and, therefore, the ratio of the said judgment in the case of Rajendra Kumar (supra) would not be applicable to the facts of the present case. Similarly, in the case of Jawaharlal Darda Vs. Manoharrao Ganpatrao Kapsikar

reported in **2002 CRI L.J. 2464**, the Minister who was questioned regarding misappropriation of the government funds, gave reply that preliminary inquiry was made by the Government and that the inquiry disclosed that some misappropriation had taken place and the Minister had stated names of the persons involved including the complainant as one of the persons involved. In the facts of the said case, the Supreme Court observed that accurate and true report of the said proceedings was published by the accused in its News Paper in good faith and, therefore, the offence of defamation was not made out. The ratio of the said judgment in the case of Jawaharlal Darda (supra) would not be applicable to the facts of the present case. In the case of A.H.K. Prasad Vs. The Union of India reported in **2002 CRI.L.J. 2464**, the Andhra Pradesh High Court has observed that the right of freedom of press is not higher than the right of freedom of speech of an individual and that it was not an absolute right but was subject to restrictions mentioned in Article 19 and, therefore, freedom of expression or freedom of press would not include freedom to defame. The other judgments relied upon by the Petitioner also are more or less on the same point and, therefore, would not apply to the facts of the present case.

11. Therefore, in my view, no case is made out for interfering with the order of issuance of process by the Magistrate and the Criminal Application will have to be dismissed. However, all questions raised by the applicants in this application will be dealt with by the trial court after the evidence is adduced by both parties on merits and in accordance with law. If an application for exemption is filed by the applicants, the Magistrate to consider the said application favourably and the applicants/accused may not be directed to remain present in Court unless their presence is absolutely necessary. The learned counsel for the applicants undertake not to dispute the identity of the applicants at the subsequent stage. Plea of the accused may be recorded through the advocate of the applicants.

12. With the above directions, Criminal Application is dismissed.

V.M. KANADE, J.